IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA ABINGDON DIVISION

UNITED STATES OF AMERICA)	
)	Case No. 1:16CR00041-012
V.)	OPINION AND ORDER
JOHN DEWAYNE FARMER,)	By: James P. Jones United States District Judge
Defendant.)	Office States District Judge

Zachary T. Lee, Assistant United States Attorney, Abingdon, Virginia, for United States; John Dewayne Farmer, Pro Se Defendant.

An evidentiary hearing is necessary to resolve defendant John Dewayne Farmer's Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 (ECF No. 957). In one of the eight § 2255 claims, Farmer alleges that counsel rendered ineffective assistance, in violation of the Sixth Amendment, by not filing a notice of appeal when requested. I (§ 2255 Mot. 8, ECF No. 957.) Consequently, Farmer presents at least one colorable claim of ineffective assistance of counsel, and the court defers adjudication of Farmer's other § 2255 claims. See, e.g., United States v. Killian, 22 F. App'x 300, 301 (4th Cir. 2001) (stating a district court should not adjudicate other § 2255 claims if vacatur is warranted); United States v. Witherspoon, 231 F.3d 923, 926-27 (4th Cir. 2000) (discussing effective representation about notices of appeal).

¹ The United States' motion to dismiss addresses the first four § 2255 claims only.

For these reasons, it is hereby **ORDERED** as follows:

1. The United States' Motion to Dismiss (ECF No. 1012) is TAKEN UNDER

ADVISEMENT;

2. The United States shall RESPOND to claims five through seven within

twenty-one days;

3. The defendant's Motion to Vacate, Set Aside, or Correct Sentence pursuant

to 28 U.S.C. § 2255 will be subject to an evidentiary hearing before the

undersigned, presently limited to the issue about a notice of appeal;

4. The clerk will arrange the appointment of counsel for defendant for the

hearing;

5. The clerk will schedule the hearing and will arrange for the defendant to

appear at the hearing by video conference from his place of incarceration;

and

6. The clerk will send copies of this Order to the defendant and to appointed

counsel.

ENTER: October 16, 2018

/s/ James P. Jones

United States District Judge

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